

ESTTA Tracking number: **ESTTA269884**

Filing date: **03/03/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186473
Party	Defendant Apex Pavers, Inc
Correspondence Address	Leslie A. Burgk Leslie A. Burgk, P.A. 900 East Ocean Blvd, Suite D-130 Stuart, FL 34994 UNITED STATES leslie@leslieburgk.com
Submission	Motion to Strike
Filer's Name	Leslie A. Burgk, Esq.
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Date	03/03/2009
Attachments	MTS No. 9.pdf (3 pages)(127216 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

APEX, LLC)	Opposition No. 91186473
)	
Opposer,)	Mark: APEX PAVERS (and design)
v.)	
)	Serial No.: 77/243,433
APEX PAVERS INC.)	
)	Filing Date: July 31, 2007
Applicant.)	

**APPLICANT'S MOTION TO STRIKE PURSUANT TO TBMP § 517 OPPOSER'S
RESPONSE TO APPLICANT'S MOTION TO AMEND APPLICATION
(TTABVUE PROSECUTION HISTORY # 9)**

Applicant, APEX PAVERS INC. (hereinafter the "Applicant"), by and through the undersigned counsel, hereby files Applicant's Motion to Strike Pursuant to TBMP § 517 *Opposer's Response to Applicant's Motion to Amend Application* filed by the Opposer on February 25, 2009 and reflected in the TTABVUE Prosecution History Docket # 9, based on the grounds that the Opposer's brief was untimely filed without Board permission, and in support thereof states as follows:

1. On January 3, 2009, the Applicant filed and served the Opposer with *Applicant's Motion to Amend Application* (TTABVUE Prosecution History # 5). The Opposer's response, if any, was due on January 23, 2009.
2. Instead of filing a Response, the Opposer filed *Opposer's Motion for a thirty (30) day extension of time to respond*. (TTABVUE Prosecution History Docket # 6).
3. In turn, the Applicant filed a Response (TTABVUE Prosecution History Docket # 7) in opposition to Opposer's Motion for a Thirty (30) day extension of time based on the Opposer having failed to show good cause pursuant to TBMP §§ 502.02(b) and 509.01(a).

4. To date, the Board has not ruled on any of the outstanding motions, and the Board has not entered an order granting the Opposer's motion for an extension of time to file a response (TTABVUE Prosecution History Docket #6). Nonetheless, the Opposer has improperly proceeded to file an untimely response prior to the Board having had an opportunity to rule on whether good cause existed for the Opposer's extension to file its response and prior to the Board having entered an order granting the Opposer permission to file its response. In light of the foregoing, the Opposer's response is untimely filed without Board permission, and therefore should be stricken.

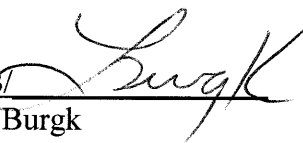
5. Alternatively, in the event the Board is inclined to give any consideration to the Opposer's untimely filed brief, the Applicant would respectfully request an opportunity to rebut the factual allegations contained therein.

WHEREFORE, the Applicant respectfully requests that the Board STRIKE *Opposer's Response to Applicant's Motion to Amend Application* (TTABVUE Prosecution History Docket #10).

Dated: March 3, 2009


Respectfully Submitted,

LESLIE A. BURGK, P.A.

By: LAB 
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CERTIFICATE OF ELECTRONIC FILING


I HEREBY CERTIFY that the foregoing Motion to Strike is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 3rd day of March 2009.

By: /LAB/ 
Leslie A. Burgk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the correspondent of record for the Opposer this 4th day of March 2009 via First Class U.S. Postal Mail:

Ms. Gwenn Roos, Esq.
Apex, LLC
100 Main Street
Pawtucket, Rhode Island 02860

By: /LAB/ 
Leslie A. Burgk